

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IGANCIO COBOS,

Plaintiff,

vs.

MICHAEL J. KILLIAN,

Defendant.

NO. CV-09-5009-LRS

ORDER DENYING MOTION FOR
RECONSIDERATION

BEFORE THE COURT is Mr. Cobos's "Objection to Order Denying Application to Proceed *In Forma Pauperis*," which the court construes as a Motion for Reconsideration (Ct. Rec. 12). Plaintiff is proceeding *pro se*; Defendant has not been served. After review of the record and being fully informed, **IT IS ORDERED** Mr. Cobos's Motion for Reconsideration is **DENIED**.

Motions for reconsideration serve a limited function. "[T]he major grounds that justify reconsideration involve an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Pyramid Lake Paiute Tribe v. Hodel*, 882 F.2d 364, 369 n.5 (9th Cir. 1989). Such motions are not the proper vehicle for offering evidence or theories of law that were available to the party at the time of the

1 initial ruling. *Fay Corp. v. Bat Holdings I, Inc.*, 651 F.Supp. 307,
2 309 (W.D. Wash. 1987).

3 Plaintiff has not alleged that there has been an intervening
4 change of controlling law. Likewise, he has not offered newly
5 discovered evidence that would justify this court taking a second look
6 at the issue in question. Thus, the only remaining question is
7 whether the court should alter its prior ruling in order to "correct a
8 clear error or prevent manifest injustice." *Pyramid Lake*, 882 F.2d at
9 369 n.5.

10 In the instant case, Plaintiff was denied leave to proceed *in*
11 *forma pauperis* based on prior unsuccessful lawsuits which made him
12 ineligible to file additional lawsuits in federal court without paying
13 the \$350.00 fee upon filing, even though he is indigent. The Prison
14 Litigation Reform Act makes *in forma pauperis* status unavailable to
15 prisoners who have "on 3 or more prior occasions, while incarcerated
16 or detained in any facility, brought an action or appeal in a court of
17 the United States that was dismissed on the grounds that it is
18 frivolous, malicious, or fails to state a claim upon which relief may
19 be granted." 28 U.S.C. § 1915(g); *see also Andrews v. King*, 398 F.3d
20 1113, 1116 n. 1 (9th Cir. 2005).

21 In his complaint, Mr. Cobos attempts to sue a state District
22 Court Clerk for failing to file certain documents in his state
23 criminal proceeding. The court cannot infer from the face of his
24 complaint that Plaintiff was in imminent danger of serious physical
25 harm. Therefore, he is precluded from proceeding without prepayment
26 of the \$350.00 filing fee.

1 By Order filed March 23, 2009, the court granted Mr. Cobos twenty
2 (20) days to pay the filing fee. Mail sent to Mr. Cobos was returned,
3 and several attempts were made to forward the Order of March 23, 2009
4 to Plaintiff. Indeed, the deadline for compliance with that Order was
5 also administratively changed to May 11, 2009. Accordingly, **IT IS**
6 **ORDERED** Plaintiff's Motion for Reconsideration is **DENIED**.

7 **IT IS SO ORDERED.** The District Court Executive is directed to
8 enter this Order, and forward a copy to Plaintiff at his last known
9 address.

10 **DATED** this 7th day of May, 2009.

11
12 ***s/Lonny R. Suko***

13

LONNY R. SUKO
UNITED STATES DISTRICT JUDGE